



PATENT
Docket No. 400-009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Andrea F. Bell

Entitled: UTILITY APRON

Filed: July 28, 1997

Serial No.: 08/901,713

) Group Art Unit: 3728

) Examiner: J. Foster

Assistant Commissioner
for Patents
Washington, D.C. 20231

RESPONSE TO OFFICE ACTION NO. 3

In response to the Office Action of August 25, 1999, the period for response having been extended three months to February 25, 2000 by the attached Petition and fee, please reconsider the application in view of the following remarks.

**Rejection of Claims 1-31 Under
Section 103(a) (Lindsay and Baumgartner)**

Independent claim 1 patentably distinguishes over Lindsay (U.S. Patent No. 4,993,551) because Lindsay fails to disclose or suggest a utility apron in a combination of elements which comprise a shell having lip portion for contacting the lip of the support device and an exterior surface for disposition at the exterior of the support device, and which further includes a pocket disposed upon the exterior surface of the shell away from the longitudinal axis, the pocket including a resilient opening, the size of the opening being variable depending upon the extent to which the resilient

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opening is extended, as recited in claim 1.

Lindsay discloses a tool holder with pockets, wherein the tool holder is used with a 5 gallon bucket to hold carpenter or tradesman tools. Lindsay specifically fails to disclose a utility apron wherein any of the pockets have a resilient opening, and wherein the size of the opening is variable depending upon the extent to which the resilient opening is extended, as recited in claim 1.

The combination using Baumgartner is improper because Baumgartner is directed to an over arm carrying bag, and thus constitutes non-analogous art. Over arm carrying bags certainly are not within the field of the invention or the Applicant's field of endeavor. Nor are they reasonably pertinent to such field. One of ordinary skill in the art, seeking to improve upon utility aprons, would not have turned to the field of over arm carrying bags to find solutions.

Baumgartner also does not aid Lindsay in that there is no suggestion or motivation in either reference to make the modifications and combinations proposed in the Office Action in ~~the foregoing~~ ^{to Baumgartner} the rejection.

In view of the foregoing, claims 1-9 and 27-28 patentably distinguish over Lindsay and Berry et al. They are in condition for allowance, and Applicant therefore requests that the rejection be withdrawn and that these claims be allowed to issue.

Claims 10-18 and 29-30 patentably distinguish over Lindsay and Baumgartner, taken alone or in combination, for the reasons set forth above with respect to claims 1-9 and 27-28.

Claims 19-26 and 31 also patentably distinguish over Lindsay and

Baumgartner, taken alone or in combination, for the reasons set forth above with respect to claims 1-9 and 27-28.

Rejection of Claims 1-26
Under Section 103(a) (Adding Yoo)

The Office Action further rejects claims 1-31 as being unpatentable over Lindsay and Baumgartner, and further in view of Yoo (U.S. Patent No. 5,431,265). Applicant submits that these claims patentably distinguish over Lindsay and Baumgartner for the reasons set forth above, including the status of Baumgartner as non-analogous art, and that Yoo fails to remedy those deficiencies.

Yoo also is non-analogous art. It relates to an enclosed sports accessory bag. Such bags are not within the Applicant's field of endeavor, nor is such art reasonably pertinent to the utility apron field. One of ordinary skill in the art, seeking to address limitations of utility aprons, would not look to accessory bags for solutions.

Even if considered analogous, which Applicant submits it is not, Yoo fails to provide a suggestion or motivation to apply its teachings to utility aprons. Applicant can find no teaching or suggestion in Yoo that its teachings can or should be applied to any articles other than accessory bags. There is no indication or suggestion that the teachings of Yoo may be applied to utility aprons.

With regard to the claims pertaining to the sizes of the openings, and the summary in the Office Action of *In re Rose*, 105 USPQ 237, 240 and *In re Yount*, 80 USPQ 141, Applicant reiterates the statements made in the Response to Office Action No. 2, e.g., that these cases are specific to their facts and do not provide blanket prohibitions of patentability where size is a distinguishing feature. The Court of

Appeals for the Federal Circuit has made amply clear in numerous report decisions that claimed inventions are to be viewed as a whole. To the extent size is a feature that serves to distinguish a claimed invention viewing the claim as a whole, and as here, where that feature provides an advantage not disclosed or suggested in the prior art, patentability may not be precluded based on some overriding proposition that size alone cannot afford a ground for patentability.

Conclusion

In conclusion, Applicant respectfully submits that claims 1-31 as pending patentably distinguish over the cited and applied references, and are in condition for allowance. Reconsideration of the application is requested in view of the remarks set forth above.

A Petition for a three-month extension of time and fee are being filed concurrently herewith. If any additional fees or amounts are due in connection with the filing of this paper or the prosecution of this application, please notify the undersigned so the fee can be promptly submitted.

Dated: February 25, 2000

Respectfully submitted,



Stephen T. Sullivan
Reg. No. 32,444



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I hereby certify that this paper or fee is being deposited with the U.S. Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. § 1.10 on the date indicated above and is addressed Assistant Commissioner for Patents, Washington, D.C. 20231.

Deborah K. Ulinckx

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